

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TYLIL MCTOOTLE, #18001049,

Plaintiff,

-against-

ORDER

19-CV-1943(JMA)(ARL)

CORRECTIONAL OFFICER JHON DOE SCULLY,
CORRECTIONAL OFFICER JHON DOE CARR,
SHERIFF FLOOD, C.O. JHON DOE,

Defendants.

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AZRACK, United States District Judge:

On April 3, 2019, incarcerated pro se plaintiff Tylil McTootle (“Plaintiff”) commenced this action against the Nassau County Sheriff Vera Flood and three unknown individuals alleged to be corrections officers at the Nassau County Correctional Center (collectively, the “Defendants”) pursuant to 42 U.S.C. § 1983 alleging a deprivation of his constitutional rights. Because Plaintiff filed an application with his complaint to proceed in forma pauperis using the state court’s form, by Notice of Deficiency also dated April 3, 2019, the Court instructed Plaintiff to complete and return the enclosed District Court application to proceed in forma pauperis. (See ECF Nos. 3, 4.) The Court received Plaintiff’s District Court application to proceed in forma pauperis on April 15, 2019. (See ECF No. 7.)

Upon review of the declarations accompanying Plaintiff’s application to proceed in forma pauperis, the Court finds that Plaintiff’s financial status qualifies him to commence this action without prepayment of the filing fee. See 28 U.S.C. § 1915(a)(1). Accordingly, Plaintiff’s application to proceed in forma pauperis is GRANTED.

IT IS HEREBY ORDERED that Plaintiff is granted leave to file the complaint without prepayment of the filing fee or security; and

IT IS FURTHER ORDERED that the Clerk of Court must forward to the United States Marshal Service for the Eastern District of New York (“USMS”) a copy of Plaintiff’s summonses, complaint and this Order for service upon the Defendants without prepayment of fees.

However, the USMS will not be able to serve the unnamed defendants without more information. Pursuant to Valentin v. Dinkins, 121 F.3d 72, 75–76 (2d Cir. 1997) (per curiam), the Court requests that the Nassau County Attorney ascertain the full names and service addresses of the unnamed defendants. Accordingly, the Clerk of the Court shall serve a copy of the complaint together with this order on the Nassau County Attorney and the Nassau County Attorney’s Office is requested to attempt to ascertain the full names of the unidentified individuals described in the complaint and to provide their names and address(es) where each such defendant can be served to the Court and to Plaintiff within thirty (30) days of the date that this Order is served upon it.

The Nassau County Attorney need not undertake to defend or indemnify these individuals at this juncture. This Order merely provides a means by which the Plaintiff may name and properly serve the defendants as instructed by the Second Circuit in Valentin. Once the information is provided to the Court by the Nassau County Attorney’s Office, Plaintiff’s complaint shall be deemed amended to reflect the full names of the unnamed defendants, summonses shall be issued as to those defendants, and the USMS shall serve those defendants.

IT IS FURTHER ORDERED that the Clerk of Court must mail a copy of this Order to the Plaintiff at his last known address.

SO ORDERED.

Dated: July 30, 2019
Central Islip, New York

/s/ (JMA)
Joan M. Azrack
United States District Judge